

Updates from Trial Court Management

Legislation

1. Changes to the Expungement Statute IC 35-38-9
 - a. XP case type should be used for all petitions filed under IC 35-38-9 effective 7/1/2015
 - b. Civil filing fee is now required except when:
 - i. Petition filed under IC 35-38-9-1 (arrest not leading to conviction or juvenile adjudication or where conviction vacated on appeal)
 - ii. Petitioner is found indigent by the court
 - c. Confidentiality of the XP case IC 35-38-9-10(i)
 - i. The case file and documents are not confidential at filing. The filer must follow Admin. R. 9 green paper rules if filing documents containing confidential information.
 - ii. Hearings are open (unless court finds some other reason to have a closed hearing)
 - iii. If the petition is granted, the entire XP case and all documents filed in the XP case become confidential.
 - iv. If the petition is denied, the XP case remains accessible to the public.
 - d. Updated materials available on the internet
 - e. "Section 1" expungements (IC 35-38-9-1) – arrests not leading to conviction or juvenile adjudication
 - i. Petition must be filed in circuit or superior court in county where criminal charges/juvenile delinquency allegation filed or if no charges/delinquency allegation was filed, in the county where arrest occurred IC 35-38-9-1(c)
 - ii. The Petition must be verified and include IC 35-38-9-1(c)
 1. Date of arrest, criminal charges or juvenile delinquency allegation and date of conviction
 2. County in which arrest occurred, information/indictment filed, or juvenile delinquency allegation filed
 3. Law enforcement agency employing arresting officer, if known
 4. Court in which charges/juvenile allegation filed
 5. Any other known identifying info such as
 - a. Name of arresting officer
 - b. Case number
 - c. Any aliases used by petitioner
 - d. Petitioner's driver's license number
 - e. A list of each criminal charge and its disposition
 - f. Petitioner's DOB
 - g. Petitioner's SS#
 - iii. XP case type
 - iv. No filing fee

- v. One petition may address multiple arrests/charging incidents from a single county but cannot include any arrests that resulted in a conviction from that county unless a filing fee is paid.
- vi. If petition granted
 - 1. Trial Court Records shall be redacted or permanently sealed IC 35-38-9-1(f)(3)
 - 2. Criminal History Information must be removed from the alphabetically arranged criminal history information system maintained by the Indiana State Police and/or local law enforcement agency. IC 35-38-9-1(f)(1)
 - 3. Appellate Court Records must be redacted or sealed IC 35-38-9-1(f)(4)
 - 4. No change needed in any internal record of law enforcement agency or records that relate to a deferral program. IC 35-38-9-1(h)
- vii. The Order must include the same info that is required in the petition. This will help the state police and BMV match records. IC 35-38-9-1(g)
 - 1. If granted, the Order should be distributed on green paper
 - 2. If denied, the Order should be distributed on white paper
- f. "Section 6" expungements (IC 35-38-9-6) includes misdemeanors and Level 6/D felonies reduced to misdemeanors and Level 6/D felonies not resulting in bodily injury
 - i. Petition must be filed in circuit/superior court in county of conviction IC 35-38-9-2(d) and IC 35-38-9-3(d)
 - ii. Petition must be verified and now must include:
 - 1. The criminal case number
 - 2. Petitioner's SS#
 - 3. Petitioner's driver's license number
 - 4. Date of arrest
 - 5. Date of conviction
 - iii. Petition no longer requires:
 - 1. A certified copy of the petitioner's BMV record
 - 2. Evidence that all fines/costs/fees and restitution obligations have been paid
 - iv. XP case type
 - v. Civil filing fee required, may be reduced or waived if court finds petitioner indigent
 - vi. Petitioner still required to serve the prosecuting attorney
 - 1. Prosecuting attorney must reply within 30 days
 - 2. If prosecuting attorney fails to reply he is deemed to have waived any objection to the petition
 - vii. If petition is granted
 - 1. Trial Court Records shall be permanently sealed IC 35-38-9-6(b)
 - a. No one outside of court personnel may have access without first obtaining a court order except for the prosecutor who may submit a written application to the court. IC 35-38-9-6(d)
 - b. Court case records will not appear on public access
 - c. Court's paper file should not be available to the public

2. Records in the possession of the DOC, BMV, the law enforcement agency who incarcerated or provided treatment or services, and any other person who provided treatment or services may not be released to anyone without a court order except for a law enforcement officer acting in the course of official duty IC 35-38-9-6(a)(1)
 3. Records in the possession of the Indiana State Police Central Records Depository must be sealed and can only be disclosed to a
 - a. prosecutor/defense attorney/probation department if they have obtained a court order and this info is necessary to execute their professional duties
 - b. FBI and Homeland Security
 - c. Supreme Court's Board of Law Examiners
 - d. A person complying with the Secure and Fair Enforcement Mortgage Licensing Act
 - e. Indiana BMV, the Federal Motor Carrier Association and the Commercial Driver's License Information System (CDLIS) when disclosure is required by IC 9-24-6-2(d). IC 35-38-9-6(a)(2)
 4. Appellate Court Records
 - a. Petitioner's name is redacted from opinion as it appears on the computer gateway
 - b. A redacted copy of the opinion is provided to any publisher
 - c. Supreme Court/Court of Appeals is not required to destroy of any existing copy of an opinion that includes the petitioner's name IC 35-38-9-6(c)
- viii. An Expungement Order:
1. Has no effect on an existing or pending driver's license suspension IC 35-38-9-6(b)
 2. Does not affect a person's requirement to register with the Sex Offender Registry. Expunged convictions must be clearly marked as "expunged" on the sex offender registry web site. IC 35-38-9-6(e)
 3. Does not restore the right to possess a firearm to someone convicted of a crime of domestic violence. This can only be done by following the provisions of IC 35-47-4-7. IC 35-38-9-6(f)
- ix. The Order must include the same info that is required in the petition. This will help the state police and BMV match records. IC 35-38-9-6(g)
1. If granted, the Order should be distributed on green paper
 2. If denied, the Order should be distributed on white paper
- g. "Section 7" expungements (IC 35-38-9-8) includes all non-excluded felonies not resulting in serious bodily injury (IC 35-38-9-4) and all other non-excluded felonies with consent of prosecutor (IC 35-38-9-4)
- i. Petition must be filed in circuit/superior court in county of conviction IC 35-38-9-4(d) and IC 35-38-9-5(d)
 - ii. Petition must be verified and now must include:
 1. The criminal case number

2. Petitioner's SS#
3. Petitioner's driver's license number
4. Date of arrest
5. Date of conviction
- iii. Petition no longer requires:
 1. A certified copy of the petitioner's BMV record
 2. Evidence that all fines/costs/fees and restitution obligations have been paid
- iv. XP case type
- v. Civil filing fee required, may be reduced or waived if court finds petitioner indigent
- vi. Petitioner still required to serve the prosecuting attorney
 1. Prosecuting attorney must reply within 30 days
 2. If prosecuting attorney fails to reply he is deemed to have waived any objection to the petition
- vii. If petition is granted
 1. Trial Court Records (paper and electronic) must clearly be marked as "expunged" but remain available to the public. IC 35-38-9-7(b).
 2. All public records related to arrest, conviction or sentence must be clearly marked "expunged" IC 35-38-9-7(b)
 3. Records relating to the conviction in the possession of the Indiana State Police, BMV and any law enforcement agency must be marked "expunged" and an entry must be added to the person's record of arrest/conviction/sentence in the criminal history data base stating that record is marked as expunged. IC 35-38-9-7(c)
- viii. An Expungement Order:
 1. Has no effect on an existing or pending driver's license suspension IC 35-38-9-6(b)
 2. Does not prevent the BMV from reporting conviction information to the Commercial Driver's License Information System (CDLIS) in compliance with IC 9-24-6-2(d). IC 35-38-9-7(c)
- ix. The Order must include the same info that is required in the petition. This will help the state police and BMV match records. IC 35-38-9-7(d)
 1. If granted, the Order should be distributed on green paper
 2. If denied, the Order should be distributed on white paper
2. Payment of Certified/Registered Mailing Costs (effective 7/1/2015)
 - a. Amends IC 33-32-2-10, which was added 7/1/2014, regarding payment of fees when the Clerk is required to send filed documents by registered or certified mail
 - b. Defines "initial mailing" as the service of complaint, pleading, etc., at the commencement of an action. This Does NOT include subsequent service, including on a party who could have been or should have been served at the commencement of the action
 - c. Defines "registered or certified mail" as any means of delivery that provides a return receipt

- d. Whenever Clerk is required to send registered or certified mail, the “initial mailing” sent to NOT MORE THAN TWO PARTIES; and to only one address for each party, is paid out of the court costs. This does not mean that if there is only one party, you can be required to send the initial mailing to two addresses for that party.
 - e. After the initial mailing, or for each additional person, the person requesting service must provide the Clerk with:
 - i. An envelope with sufficient postage affixed, addressed to the recipient with the Clerk’s address as the return address
 - ii. The USPS or other forms for registered or certified mail. If return receipt is requested, the forms must be completed so that the Clerk gets the return receipt
 - iii. The USPS or other fee for appropriate service by registered or certified mail and return receipt, if requested
 - f. The Clerk may not collect any additional fees for mailing
- 3. Sheriff Service of Process Fee (effective 7/1/2015)**
- a. Amends IC 33-37-5-15 to increase service of process fee from \$13 to \$25
 - b. May be collected only one time per case (not one time per party), however the Sheriff is allowed to collect one additional service of process fee of \$25 per case for any post judgment service.
 - c. If the court issues a fee waiver, the Sheriff’s Service Fee cannot be collected. A fee waiver means all fees under IC 33-37 (which includes the Sheriff Service of Process Fee) must be waived.

Rule Amendments

4. Release of Judgment (Trial Rule 58(D) and Small Claims Rule 11(D)) effective July 1, 2015

Upon payment in full of a judgment, including accrued interest and court costs, the judgment creditor shall file a satisfaction/release of judgment and the Clerk shall note the satisfaction/release of the judgment on the CCS and on the judgment docket. Based upon a review of the Clerk's payment records, the Clerk may, or at the verified request of the judgment debtor shall, issue a Notice to the judgment creditor that a judgment, including accrued interest and court costs, has been paid in full and that the judgment should be satisfied/released. The Notice shall be sent to the judgment creditor and debtor at the address shown on the Chronological Case Summary. The Clerk shall note the issuance of the Notice on the Chronological Case Summary. If the judgment creditor does not agree that the judgment should be satisfied/released, the judgment creditor shall, within 30 days of the date of the issuance of the Notice, file a verified objection. If the judgment creditor does not file an objection or a satisfaction/release of judgment, the judgment shall be deemed satisfied/released and the Clerk shall note the satisfaction/release of the judgment on the Chronological Case Summary and on the Judgment Docket.

- a. The Clerk may, but is not required, to send this Notice to the judgment creditor unless the judgment debtor sends a verified request. If the judgment debtor sends the verified request, the Clerk must send the Notice.
- b. A form Notice is available (copy attached) on the website

5. Case Numbers for Guardianship Cases (Administrative Rule 1(B)(4)(d)) effective July 1, 2015

Guardianship Cases. The clerk shall assign a separate case number to each individual, adult or juvenile, who is subject to an application to establish a Guardianship - GU case. Each guardianship case number shall be counted as a case on the court's quarterly case status report. Notwithstanding the separate case number requirement set forth above, in situations in which a guardianship is sought for two (2) or more minors or incapacitated persons who are children of a common parent, parent and child, or husband and wife, only a single probate filing fee shall be charged as provided by I.C. 29-3-5-6 and the applications may be joined for hearing.

- a. One GU case number for each incapacitated person
 - b. Probate filing fee is required for only one GU case, in certain cases of related incapacitated persons
 - c. Cases may be joined for hearing
6. Confidential Court Records (Administrative Rule 9) effective January 1, 2015. Much of Admin. R. 9 was re-written. Here is an overview of the biggest changes:
 - a. The list of specific records that are considered confidential has been deleted. This does not mean that any of these confidential records are now available to the public. All of the items that used to be listed were confidential according to other statutes or rules. The onus is now on the filer to know what is and is not confidential.
 - b. There must now be a separate written notice when confidential information is submitted in a case that is available to the public (this is not necessary when the entire case is considered confidential). This notice remains part of the public case file and serves as an indication to the public, the Court, Clerk, Court Reporter, and Court Staff that there was some confidential information filed and gives the basis for its confidential nature. The forms are available at <http://www.in.gov/judiciary/4235.htm>. Merely filing the record on green paper does not satisfy this new notice requirement
 - c. Pleadings or papers filed with the Clerk - A new form (Form 9-G1)) is now required when a confidential document is filed. On this form the filer must list the court caption, the name of the document being filed that contains the confidential information and a specific law, statute or rule that declares this information confidential.
 - d. Exhibits - Another new form (Form 9(G)(2)) is now required that must be tendered if confidential information is tendered during an in camera review, hearing or trial.
 - e. Oral statements in transcript on appeal – This notice requirement applies only to transcripts filed with the Clerk by the Court Reporter for use on appeal. (Note: this requirement does not apply to a private transcript that is never filed with the Clerk however, if this private transcript is tendered to the Clerk, the following notice requirements will apply).
 - i. Notice during hearing or trial – if any oral statement(s) contained in the transcript on appeal is to be excluded from Public Access, then during the hearing or trial, the Court Reporter must be given notice of the exclusion and the specific grounds upon which the exclusion is based. Admin. R. 9(G)(5)(a)(1)(c).
 - ii. Notice after the hearing or trial – if notice was not provided during the hearing or trial, any party or person may provide written notice in accordance with Appellate Rules 28(A)(9)(C) or (D). Admin. R. 9(G)(5)(a)(i)(c).

- f. Preparation of Transcript on appeal – The Court Reporter must comply with Appellate Rules 28(A)(9) and 29(C) when preparing the transcript on appeal. Admin. R. 9(G)(5)(a)(i)(c).
- g. Green Paper Requirements:
 - i. No need to file anything on green paper when the entire case is considered confidential.
 - ii. When only a portion of the document is considered confidential there will be (generally) two versions of the document filed:
 - 1. The Public Access Version – everything is filed on white paper with the confidential information redacted (if it is only part of a page) or omitted (if it is a whole page). Admin. R. 9(G)(5)(b)(i).
 - 2. The Non-public access version – this separate version is filed on green paper and this version must be marked “Not for Public Access” or “Confidential” with the caption and number of the case clearly designated. Admin. R. 9(G)(5)(b)(ii)(b).
 - 3. Exception: if the omitted or redacted information is not necessary to the disposition of any issue in the case, the excluded document/information need not be filed. Only the Public Access Version (with the confidential info redacted) is required. Admin. R. (9)(G)(5)(b)(ii)(a).
- h. Improper Filing of Court Records on Green Paper
 - i. If a court determines a document has improperly been filed on green paper it must provide notice of this determination to all parties.
 - ii. The improperly excluded record will be made available to the public seven days after this notice unless within these seven days, the person/party affected by the release of this record begins the process of properly excluding the record pursuant to 9(G)(4).
 - iii. If the court grants the 9(G)(4) request, the record remains excluded from public access.
- i. Sanctions for Non-compliance - The failure to comply with the provisions of 9(G) can subject counsel or a party to sanctions. Admin. R. 9(G)(6)(d).
- j. Information a party wants excluded but no statute/rule exists declaring it confidential.
 - i. Parties cannot agree to exclude information from Public Access nor is a Trial Rule 26 Protective Order a valid means to exclude public access. See Admin. R. 9(G) commentary; Travelers Cas. & Surety Co. v. U.S. Filter Corp., 895 N.E.2d 114 (Ind.2008); Angelopoulos v. Angelopoulos, 2 N.E.3d 688 (Ind.Ct.App.2013); Allianz Ins. Co. V. Guidant Corp., 88 N.E 2d 405 (Ind.Ct.App.2008).
 - ii. There are only two ways to request public information be made confidential:
 - 1. Administrative Rule 9(G)(4)
 - 2. IC 5-14-3-5.5 (Access to Public Records Act)

Miscellaneous Issues

- 7. Handling an Out of State Subpoena – if someone from out of state comes to Indiana and wants the clerk to issue a subpoena for deposition or discovery. IC 34-44.5-1-1 (AKA the Uniform

Interstate Deposition and Discovery Act) permits the clerk of court of Indiana to issue this subpoena.

- a. The clerk does not seem to have any discretion on whether to issue the Indiana subpoena. The Act involves only actions by the clerk.
 - b. A CB case may be opened by the clerk with no filing fees. This CB case is optional for those clerks that want an electronic record of the subpoena request in their CMS.
 - c. If a court ends up getting involved (like if a motion to quash/motion to modify the subpoena is filed or if a protective order is involved) then an MI case would be opened with regular filing fees.
 - d. The Sheriff Service Fee would apply (see 33-37-5-15) if the person wants service by sheriff.
 - i. If the person requesting the subpoena has filed a civil action in a foreign court, the sheriff service fee is \$60.
 - ii. If the person requesting the subpoena has not filed a civil action in a foreign court the sheriff service fee is \$25 (effective 7/1/2015). See IC 33-37-5-15(b).
 - e. Whether the state the person is coming from has adopted the Uniform Interstate Deposition and Discovery Act doesn't matter.
 - f. Can the Clerk use the other state's subpoena form?
8. Foreign Judgments – two types judgments from other Indiana counties and judgments from courts outside of Indiana
- a. Recording judgments from other Indiana counties
 - i. Open a CB case
 - ii. Assess the \$3 recording fee (IC 33-37-5-4)
 - iii. If the creditor seeks to execute on this judgment, open a new MI case and charge regular civil filing fees
 - b. Recording judgments from courts outside of Indiana (IC 34-54-11-1 and 34-54-11-3)
 - i. Open a MI case
 - ii. Assess regular civil filing fees

Questions about Fees

9. Assessing a Late Payment Fee (I.C. 33-37-5-22)
- a. A \$25 late payment fee may be imposed by any circuit, superior, city, town or Marion County small claims if that court has:
 - i. adopted a local court rule imposing the fee;
 - ii. the defendant is required to pay court costs, including fees, a fine or a civil penalty (the fee cannot be imposed on a defendant found indigent by the court);
 - iii. the court has found the defendant has committed a crime, violated a statute defining an infraction (including unlawfully parking in a space reserved for a person with a physical disability, violated an ordinance of a municipal corporation or committed a delinquent act
 - iv. this would include a default judgment,
 - v. the fee cannot be assessed if defendant has merely failed to appear; and

- vi. the defendant fails to pay the clerk in full before the later of the end of business on the day the court enters the conviction or judgment or the end of the period specified in a payment schedule set for the payment of court costs, fines and civil penalties under local court rules.
 - b. A court may suspend the late payment fee for good cause.
 - c. All late payment fees collected are disbursed to the:
 - i. county general fund if collected by a circuit or superior court however, if the fee is collected by the circuit court, a local ordinance may provide that 40% will be deposited in the clerk's Record Perpetuation Fund with the remaining 60% deposited to the county general fund;
 - ii. local general fund if collected by a city or town court; or
 - iii. township trustee if collected by a Marion County Small Claims Court
10. Special Death Benefit Fee (IC 35-33-8-3.2) - This \$5 fee is only collected from deposits (other than real estate bonds) meant to ensure the defendant's appearance in court. This fee is only collected from a bond executed by a person who has been arrested for the commission of an offense (so criminal actions only). See IC 35-33-8-1. This fee may be collected by the sheriff if this is authorized by the clerk. If the clerk collects this fee, it is distributed semiannually to the Trustees of the Indiana Public Retirement System for deposit to the Special Death Benefit Fund. If the sheriff collects this fee it is distributed monthly to the county auditor.
11. Bond Administration Fee (IC 35-33-8-3.2(a)(2)) - 10% of the monetary value of the bond or \$50, whichever is less, may be retained from all deposits (other than real estate bonds) meant to ensure the defendant's appearance in court by the clerk as an administrative fee. This fee may be retained at any time during the case. There is no requirement of conviction. This fee is deposited in the County General Fund.

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